FINAL REPORT

PART I

CITIZEN PARTICIPATION

IN

SITING ENERGY FACILITIES

IN MONTANA

TASK E

FORD FOUNDATION PROJECT

Submitted by

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FOREWORD

The original concept of this study was developed by the Principal Investigator with considerable help from Dr. Lauren McKinsey of MSU's Political Science Department. His interest and courtesy are hereby acknowledged.

The overall objective of this study was to define and evaluate available public participation program options in re the use of siting criteria in Montana. A sub-objective was to make recommendations toward a more effective public participation program in the state. As should have been expected at the outset, the investigative part of the study lead to changes in these objectives. The text of this report will identify such, as needed.

The entire investigative part of this study, following the design set up initially, was conducted by Mr. William Rule, the research assistant in the project. Mr. Rule also developed the first draft of this report. If anything constructive and positive in the way of changes in current practices and thinking regarding citizen participation does indeed occur, the vast bulk of the credit will have to go to Mr. Rule.

Also to be acknowledged is the part played by the Ford Foundation, not only in the funding of the project, but also in the concept of active participation of institutions of higher education and state governments. Montana citizens owe a debt of gratitude to the Foundation.

R.A.S.

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INTRODUCTION

Montana, a state of abundant natural resources, has been exploited for those resources since the white man came. First came the trappers, then the gold miners, the buffalo hunters, the early cattle barons, the copper kings, and more recently, the real estate developers. Montana has lived a fast history, one of people seeking their fortune with little regard for environmental consequences and then moving on.[1] In recent years though, a more stable population, spurred on in part by environmental consciousness, has formed a movement termed by some as "The Montana Resistance." This resistance has been successful in stalling developments and instrumental in passing legislation which places conditions on developments and insures their necessity.[2] This resistance is by no means universal, for many Montanans see development as a means to a stronger economy and a more enriched culture among other advantages. These issues are further complicated by the sparcity of our population, a nationwide cry for energy, the abundance of energy-producing resources, the large federal holdings of land, and many other factors. It is becoming increasingly obvious that Montana is going to have to do more than its share of supplying the nation with energy.

If we assume, then, that some energy and industrial activity must be situated in Montana, how do we decide where it should go? The project of which this paper is part is an effort to develop criteria for siting of these facilities. The specific charge of Task E is an analysis and evaluation of public participation in the establishment and application of that criteria.

Part one of this study is a discussion of the legal foundation for citizen participation (CP)[3] in Montana; an identification of the various process options available to the public for being involved in the establishment and application of siting criteria; and a look at public participation as provided for in two

very significant statutes: The Montana Environmental Policy Act and the Major Facility Siting Act. Part two is an evaluation of the available process options.

One of our initial tasks was to define what kind of sites we wished to concern our study with. Our responsibility was to analyze CP in "energy and other industrial activities." Given this rather loose constraint, we have chosen to analyze public participation in those energy and industrial sites whose location is regulated by the State of Montana through permits, licenses, or approvals. Further, we wish to limit "industry" to exclude retail commerce and any business which does not affect the quality of human environment.

We will also restrict our discussion of CP practices to those carried out by the State. Some companies - such as Montana Power Company - have had recent success in involving the public in decision-making about siting; and federal law mandates some public involvement; but our report will not include a discussion of such practices. Rather we are concerned primarily with public participation in environmental "permitting" decisions in Montana and by Montana.

GENERAL CP PROVISIONS

The 1972 Montana Constitution holds that "the public has the right to expect Government Agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to final decision as may be provided by law."[4] This appears to be the only constitutional clause of its kind in the U.S. Its intent as evidenced by the floor debate at the constitutional convention[5] and the Bill of Rights Committee's formal report[6] was somewhat watered down by the phrases "right to expect" and "as may be provided by law." The net effect is that our Right of Participation provision is not self-executing.

In 1975, the Montana Public Participation Statute[7] was passed by the state legislature and signed into law. Now the Right to Participation has some teeth. Of particular note in the statute are:

> "Agency means any board, bureau, commission, department authorized by law to make rules except..." the legislature, the judicial branches, the governor, or the military.
>
> "Rule" does not include statements of internal management, declaratory rulings on applicability of statutory provisions or rules, or intra-agency memos.
>
> "Agencies will develop procedures providing for adequate notice and assist CP prior to the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate that is of <u>significant</u> (our underscore) interest to the public.
>
> "The governor shall insure that each board, bureau commission, department, authority, agency or officer of the state adopts coordinating rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."
>
> "An agency will have complied with the notice provision of the act if an environmental impact statement (EIS) is prepared and distributed in accordance with the Montana Environmental Policy Act (MEPA), (if) a proceeding is held as required by the Administrative Procedures Act, (if) a newspaper within the impacted area carries a story or advertisement concerning the decision."
>
> "Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public."

Some debate exists as to just how insignificant an agency decision must be to escape the rigors of this act. At one point the statute points to rule-making; later it clearly emphasizes decisions which are of significant interest to the public. In the end, the issue falls into the age-old ethical question

of how much should the public be allowed to be involved in the workings of government. This ideal of involving the public in bureaucratic decisions can be countered by the pragmatic retort of "how can I get any work done with John Q. camped out on my desk." This near-paradox will be discussed further later in this report.

The Citizen Participation Statute charges the Governor with the responsibility of seeing that all rulemaking agencies adopt rules to comply with this same statute. Almost four and one half years after the passage of the statute these rules have not yet been adopted. Several of the Executive departments have adopted rules; the vast majority have not. To our knowledge, no effort has been made on the local level.

A Governors' Task Force on Citizen Participation (GTFCP) began work in January of 1978 charged with two objectives:

1) to draft coordinated rules for citizen participation which might be adopted by state agencies to comply with the statutory and constitutional requirements for citizen participation in the decisions of state government; and

2) to develop ways to make citizen participation easier and more productive.[8]

Thus began a sincere but ill-fated effort to coordinate a state policy and comply with the rulemaking provision of the Citizen Participation Statute. Comprised of working professional people, the GTFCP worked without remuneration, staff, or much spare time to donate. The fruit of their labor was a draft of proposed rules and recommendations which were submitted for hearing and comment. Their intention was to take this work back to be drawing board and refine it for a final proposal.[9] The hearing was poorly attended. Comments from administrators were austere. The GTFCP was disbanded two months short of its

intended life span, its draft proposals "accepted" and assigned to staff for revision.

Plagued by lack of funding, lack of citizen support, and lack of acceptance by agency directors, most of the GTFCP proposals are still there. Efforts have been made however, to carry out the following:

- O The Citizens Advocate Office is publishing an agenda of important state meetings scheduled throughout Montana in which the public may be interested.
- O The Employee Relations Bureau has been charged with the task of providing a Citizen Participation Training and Education Program for Agency Administrators.
- O Cost estimates are being made on enlarging the scope of the "Montana Manual of State and Local Government" to make it easier for citizens who wish to be involved to find the correct means.

A set of model rules might be completed in draft form by the governor's staff in this fall of 1979. Though these overdue rules may get the administrative agencies into action, local governments seem to remain ignorant of their obligations.

Right-To-Know Provisions

In support of our Right to Participation is the ensuing Right-To-Know clause. "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases which the demand of individual privacy clearly exceeds the merits of public disclosure."[10]

Two points of law are raised here: open documents and open meetings. Montana's Open Documents Law[11] reads in part as follows: "Public writings

are (1) the written acts or records of the acts of the sovereign authority of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of this state, of the United States, of a sister state, or of a foreign country; or (2) public records, kept in this state, of private writings. All other writings are private. Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute."

The Open Documents Statute clearly allows citizens access to government files. Yet finding ones way to a specific document could be an awesome chore for anyone not intimately familiar with the filing system. Harder still would be finding relevant material on a topic without having specific documents in mind. This problem was recognized by the GTFCP. One proposal they were considering was to recommend that a standard, indexed, file system for all departments be investigated.

Montana's Open Meeting Statute[12] is composed of several significant sections:

- Liberal construction - in cases of doubt the provisions of this act will be liberally construed to provide for open deliberation and agency action.
- What meetings are open? - "all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds. . ."
- Exceptions - matters of individual privacy if such demands clearly exceed the merits of public disclosure; or collective bargaining or litigation if an open meeting would have a detrimental effect on an agency's position.

- Minutes - minutes will be kept and available for public inspection.
- Meeting defined - a meeting is "the convening of a quorum of the constituent membership of a public agency" either in person or by means of electronic equipment, i.e. telephones "to hear, discuss or act upon a metter over which the agency has supervision, control, jurisdiction, or advisory power."
- Recording - all such meetings may be recorded.
- Noncompliance - decisions in violation of this act can be declared void by the courts if suit is brought within 30 days, or in extreme cases, criminal penalties can be invoked.

The open meeting notion is a subject of debate for CP advocates. At issue is the question of just how open the workings of state government should be. The intent of the open meeting law is stated as being "that actions and deliberations of all public agencies shall be conducted openly. The people of this state do not wish to abdicate their sovereignty to the agencies which serve them."[13] Armed with this notion, some CP advocates are pushing for absolute openness and candor of all agency proceedings. Many administrators balk at this idea for a variety of reasons:

1) It would bog down administrative proceedings so that output would be virtually nil.
2) Quite often, problem solving would involve a discussion of personalities, which some administrators are hesitant to bring into public focus.
3) The press, with its tendency to sensationalize, can make "mountains out of molehills" in an effort to make a meeting appear newsworthy.
4) Public posturing, an inevitable consequence of an audience, would stymie creative thinking. Freedom to express bad ideas is a necessary component of the critical thinking process.

Meanwhile, the advocates in their drive for a frank and open government are promoting revisions of the Open Meeting Statute. Most complete is a list of amendments considered by the GTFCP:

a) to require a notice of meetings 72 hours in advance,

b) to include all scheduled meetings,

c) to require written statement of reasons for closed meetings,

d) to extend the 30-day filing period for suits,

e) to strengthen the sanctions of the law,

f) to maintain a central registry of agency responses to open meeting requests and decisions.

The ideal of a totally open and candid government is a noble one for, in the people's business, there should be nothing to hide. Once again, what is at issue here is ideals versus pragmatics. A major attitude change in decision makers would be essential to achieve this lofty goal. This alone might be feasible over a period of time and might even be desirable. But far more difficult would be the attitude change necessary in the public and press, the forbearance to allow administrators sincere interaction, complete with human error, personal failings, periods of incompetance and the like. Only in this way could public posturing give way to truly candid decision making. This ideal is, in our opinion, contrary to the "nature of the animal," and hence, an impossible goal. A single rabble-rouser could make enough waves to destroy any aura of candidness.

A certain amount of skepticism of unwatched decision makers is not totally unjustifiable. Certainly with no right to observe the process, the public would be vulnerable to countless hazards. Yet to assume that decision makers are not to be trusted as a rule is unwarranted. We feel the decision-making process should be visible for the most part; and more public notice of what

is happening and when would be helpful to that end. Total candidness? A nice ideal, but impractical.

Montana law provides for public participation quite extensively. In practice, however, the spirit of the law is not being carried out as fully as it might be. A person who is aware of his/her rights and knows how to get around state government will find that the government is accessible, though his/her presence may be viewed as an intrusion. But decision and policy making is not in full view of the public. Value judgments aside, right or wrong, practical or impractical, the intent of the lawmakers is not being carried out. Whether it should be is another issue entirely.

ESTABLISHMENT OF SITING CRITERIA

Discussion of citizen participation in the establishment of siting criteria will be directed toward these activities: legislation, rulemaking and the establishment of policy statements. Rules and policy statements are primarily generated from the State Executive Departments. Rules by definition designed for resolving issues of policy, law, discussion, and fact can have the power of law.[14] Policy statements are less stringent directives which serve as decision-making guidelines.

Legislation

Legislation, of course, is the source of constitutional statutes, resolutions and amendments; and is passed by the Montana State Legislature, by the people of Montana in initiatives or by both in referendums. Legislators are elected by the citizens of the state; but, while the act of voting is the very foundation of our representative form of government, it is also the point

where an individual has the most negligible impact. Far more effective is the influence or power one can exert on legislators. Lobbying is an institutionalized means by which the private sector (usually special interest groups of one form or another) can attempt to influence legislators. A lobbyist must register with the Secretary of State and file a statement of purpose with his or her $10 filing fee.

In a less structured manner, anyone can attempt to influence legislators by any means in which that official makes themselves accessable - over coffee, by mail, in trade for release of his family from hostage, or whatever. Some legislators are more accessable and open than others, of course. Many will seek citizen input in the preparation of bills.

After a bill is submitted to one house of the legislature, it is referred to the appropriate committee for study and recommendation for passage or failure. Part of this committee activity is a public hearing, an opportunity for any Montana resident to step forward and make his views known. Previous to 1972, the public and press would be dismissed while the committee debated and voted. But the 1972 Montana Constitution provided that the whole of these committee meetings including the subsequent vote be open to the public.[15, 16]

Rules regarding public notices on committee hearings are determined by each legislative assembly. Though these proceedings are in view of the public, the decisions are generally made without formal public scrutiny.

The 1972 Constitution provided for annual legislative sessions, but in 1974, Montanans reinstated biennial sessions by a constitutional vote. Among other effects, this change eliminated hold-over bills. While this curtailed opportunity for the public to influence the outcome of specific bills, numerous unresolved issues are still apparent between sessions. Interim committees work on a number of these issues, and some of these committees have very actively solicited public views.

Resolutions are not law but rather statements of legislative intent and sentiment. Yet a resolution, when adopted, can force policies upon an agency and amend or repeal agency administrative rules. Joint Resolutions must be approved by both houses and follow the same procedures as a bill. Simple resolutions need only be adopted by one house and are not subject to mandatory public notice and hearing requirements.

Referendums bring legislation closer yet to the people. Generally used by the legislature to gauge public sentiment, referendums can be initiated by the public as well. A referendum is the submission of a proposed statute to public vote. Also, if citizens wish to take exception to a legislative enactment, they may place such a referendum on the ballot by acquiring 5% of qualified voters' signatures from one third of the legislative districts totaling 5% of the voters statewide.[17] These signatures must be gathered within six months of adjournment. By gathering the signatures of 15% of the voters in over half the districts, an act can be suspended until approved by vote.

State constitutional amendments are placed on a referendum ballot by two-thirds vote of the legislature. In the ensuing election, the majority of the public prevails.

By initiative, the public makes law or amends the constitution. Again, by acquiring 5% of the voters in one-third of the districts including a total of 5% of the statewide electors, a bill can be put on the ballot and passed by majority vote. To put an amendment on the ballot, petitions must be submitted by 10% of the electors of two-fifths of the legislative districts and total 10% of the statewide voters. The petition must include a full text of the amendment and that text must be published for two months prior to the election.

ADMINISTRATIVE PROCEDURES

The State Administrative Agencies (Montana's Executive Departments) are charged with the responsibility of administering laws which are enacted. These agencies are in turn governed by administrative law, specifically the Administrative Procedures Act.[18] With the outline given to them by the legislature, it remains for the agencies to fill in all the administrative gaps by rule-making, policy making, and day-to-day decision making. The former two will be discussed in terms of establishment of siting criteria.

Rulemaking

There are two types of rules: descriptive rules which describe agency organization, and policy rules which implement law and policy which an agency enforces. At the bottom line, rules have the power of law and prescribe the manner in which legislation is carried out and enforced by an agency.

Rules are implemented, altered and repealed by a process which allows for a certain amount of public participation. The Montana Administrative Register is published monthly by the Secretary of State and circulated to subscribers and certain locations throughout the state.[19] The Register is also available to the public through state agencies at a nominal fee. This Register is the primary means of public notice. Notice is also sent to those who have made "timely requests" at least 30 days in advance of the agency's intended action and no more than six months prior.

The "notice" shall include "a statement of either the terms or substance of the intended action, or a description of the subjects and issues involved, rationale for the intended action, and the time when and place where, and manner in which interested persons may present their views thereon."[20]

Before a rule can be adopted,[21] the agency must give interested persons at least 20 days notice of a hearing and 28 days to submit their views or arguments. If the rule is to be substantive,[22] an oral hearing is granted if requested by 10% of the people directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having no less than 25 members who will be directly affected. Further, an agency is at liberty to use whatever informal conference and consultations it wishes to obtain views and advice in addition to the hearing procedure.

A public (oral) hearing on a rule is presided over by an officer appointed by the agency. Anyone wishing to express views must be put on a witness list by advising the hearing office of his intentions, but any witness who so desires, may be represented by council. A record is kept of the proceedings. After the hearing, a decision is made by the agency, whereupon individuals are entitled to ask why evidence from the input process was rejected, and the agency is bound to answer.

Emergency rules can be implemented for up to 120 days without the proceeding process if there is imminent damage to public health, safety, or welfare.

The public may also initiate rules by petitioning an agency, setting forth the contents, reasons, and effects of the proposed rule. Within 60 days the agency must begin the rulemaking procedure or deny the petition and state its reasons.

Contested Cases

Whereas rulemaking establishes general guidelines and procedures for an agency, contested cases determine specific rights of a particular party. A contested case is any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. It is a means for a person to contest an intended agency action which will affect him.

The Administrative Procedures Act guides contested cases, starting with the directive that notice of a contested case hearing will be given, including the time, place, and nature of the hearing and a statement of the matters at issue. A hearing examiner, appointed by the contested agency, administers the proceedings. He may be disqualified for personal bias.

The hearing itself is formal in nature. All testimony is given under oath and subject to statutory rules of evidence and cross examination. A transcript is kept and is open to public review. Because of this formality, any party has the right to be represented by legal counsel.

At the conclusion, the hearing officer makes the decision based on the presented evidence and presents it in writing for public inspection complete with a rationale for that decision.

Judicial Review

Agency decisions are also subject to judicial review under the Administrative Procedures Act. Any aggrieved party, after exhausting administrative courses of action, including contested case actions, may appeal an agency decision to district court within 30 days of that decision. The court's power of review, however, is limited somewhat.

"The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of reliable probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) because findings of fact, upon issues essential to the decision were not made although requested."[23]

Judicial review other than by the Administrative Procedures Act can also be invoked on agency decisions. The typical judicial review asks whether agency action is arbitrary or capricious. Yet standards vary from case to case. Some courts will go so far as to investigate errors in agency judgment.[24]

Policy Statements

Policy statements by State administrative agencies can also have the effect of determining siting criteria. Policy statements are general courses of action adopted to determine decisions and actions in specific cases. One such example is the Board of Natural Resource's policy to locate new transmission lines along existing corredors wherever feasible.

The State Constitution's Public Participation Clause, the Open Meeting Clause, and the Public Participation Statute provide the opportunity for any interested member of the public to have input in agency decision making of this kind as well as any other kind.

Siting Methodology

Montana is now considering the development of a comprehensive methodology for making siting decisions. The establishment of siting methodology in Montana would have to be institutionalized through one of the aforementioned processes; but in that methodology itself, public participation could be instituted within several steps.

In the first place, citizens might be involved in the development of a methodology. And indeed they are, for the whole of this very research project is an exercise in tapping university resources to assist in developing siting methodology. We researchers in turn tap more of the public to varying degrees as we find valuable.

The public probably would not have much input into the forecasting of Montana's energy needs as that will be a technical study; but it would seem that their opinions and values might be useful in determining how responsible we should be in supplying energy to other states.

The most obvious step in which to involve the public would be in developing a methodology for weighting criteria. That is to suggest that citizens should have some input into deciding which kind of data should have what kind of weight, i.e. how much should the preservation of a culture be weighed against sparcity of population? How much does one weigh aesthetics against need for jobs?

We believe that the public might be involved in other steps as well. But how should the public be involved in these decisions? We will contend in part two of this study that specific values or goals of CP should be delineated before a program is instituted and therefore will defer this judgment.

So, in the establishment of siting criteria, the public can become involved in a number of ways: they elect the legislators and make their attempts to influence these lawmakers through formal and informal channels; citizens can make their own laws as in the case of the nuclear plant restrictions imposed by the electorate in 1978; they have the constitutional and statutory right to observe state decision-making meetings; hearings are provided for input in legislation and rulemaking; they can petition to initiate their own rules; and if a decision has been made, an aggrieved party may take exception to that decision in a contested case proceeding and further yet, to court.

APPLICATION OF SITING CRITERIA

Application of siting criteria (as well as application of most other laws) falls to the agencies to be administered. Over 110 kinds of permits[25] regulate activities which may have an impact on Montana's environment.[26] Many of these, such as hunting licenses and timber removal permits have no formalized provisions for public participation. While such specific permits as slash burning, an activity regulated by the state Department of Natural Resources and Conservation (DNRC), provide for no public input, air quality standards and the Montana Environmental Protection Act (MEPA), which do have formalized public participation proceedings, may be invoked if the discharge is significant enough. Hearings provided by law dealing with state permitting authority will be held under the contested case provisions. Roughly half of the permits provide for public participation prior to their issuance.

Where citizen participation is institutionalized within statutes, hearings and public comment periods are utilized almost exclusively. Generally a notice is placed in the legal section of the newspaper which is most widely circulated in the potentially impacted area once a week for two to four weeks prior to the hearing or comment period. In some cases, such as in the adoption of a development district, notice of public hearing is posted in several buildings around the affected area. A few statutes provide that individual notices be mailed to landowners who are directly impacted or to people who have requested notices be sent to them.

In rare instances, public input is formally sought through hearings and comment periods in the early stages of decision making. Examples of early input are found in floodplain delineation and in planning and zoning. More often, however, public opinion is sought on a permit application, a preliminary or tentative policy decision or a plan after most of the creative thinking

has already been done. Here, hearings and comment periods are used to examine public sentiment on a potential or proposed action.

Advisory councils are groups of people whose existence is provided for by state statute and whose purpose is to study a specific topic and to advise an agency on courses of action. A key word here is "advise." An advisory council's recommendations are not binding on an agency. Appointed by the governor, advisory councils are not always comprised of citizens from the private sector. Most of the advisory councils in existence now are, in fact, heavily staffed with agency personnel.

Informal Process Options

To this point we have been discussing citizen participation (CP) as provided in statutes and rules. Yet beyond these institutionalized avenues of CP, administrative agencies apply other means of involving the public. With varying degrees of effort and sincerity, they do seek public opinion in the early stages of decision making and policy formulation. Informational and input-seeking hearings are held by some agencies. Many agency officials even more casually seek out opinions of potentially impacted people, fellow administrators, special interest groups, and even friends. Potential policies and decisions are often circulated in draft form to gather opinions as well. Unsolicited letters from the public are weighed to varying extents as is input from personal visits.

Ad hoc committees are used as well. Similar in function to advisory committees, these groups are much less formal in structure. Their existence is not mandated by statute, but their purpose is still to serve a research and advisory function. Agency administrators may appoint these committees at their own discretion.

Given the more specific subject of siting criteria, an analysis of two specific acts warrants investigation. These two statutes are the Montana Environmental Policy Act (MEPA) and the Major Facility Siting Act.

The Montana Environmental Policy Act

Patterned after its national counterpart, MEPA[27] has the effect of forcing agencies to justify their decisions on acts of significant environmental impact and assures opportunity for citizen review and input in that decision. MEPA is a skeletal outline identifying state policy. The flesh is found in its attendant rules.

At this writing, MEPA is somewhat in a state of flux. New rules implementing the statute have been drawn up but not yet approved. More significantly, a questionable State Supreme Court ruling has relegated MEPA to a procedural status. This battle, however, is far from over.

If an action of a department or board (such as granting a permit) may have significant impact on the human environment, a preliminary environmental review (PER) must be written up. The PER must include, in part, "an evaluation of the immediate and cumulative impact on the physical environment, including where appropriate: terrestrial and aquatic life and habitats; water quality, quantity and distribution; soil quality, stability and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy; an evaluation of the immediate and cumulative impact on the human population in the area to be affected by the proposed action, including where appropriate: social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity

and distribution of community and personal income; transportation networks and traffic flows; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; demands for energy; and locally adopted environmental plans and goals."[28]

The significance of this act is the assurance that social, cultural, aesthetic and economic considerations will be a part of the decision-making process as well as the physical environment in the PER. This PER is a public document, and hence, is available to citizens. If the PER indicates a significant impact, a draft environmental impact statement (EIS) will be prepared. The proposed rules effectively eliminate PER in cases where an EIS will obviously be warranted. Like the PER, the EIS will also include the human as well as physical aspects of study.

After the draft EIS is transmitted to the Governor, the Environmental Quality Council, administrative agencies, and interested organizations and individuals, a 30-45 day comment period is held for reply which can be extended another 15 days for good reason. The proposed new rule would hold the initial comment period to 30 days, extendable another 30 and or "additional reasonable period for good cause". When this time is up, the applicant has "reasonable time" to reply to the comments if he so wishes. No action which requires the preparation of a final EIS can be taken within 60 days (45 by the proposed rules) of the transmitting of the draft to the governor.

Depending upon the nature and number of substantive comments received in response to the draft statement, the draft may satisfy the requirement for a final EIS. In this case the agency will send a copy of all or a representative sample of comments received to the Governor, EQC, the applicant and all commenting or consulting parties and explain the rationale for their

actions. If a final EIS is prepared, the comment and response periods will be the same as on the draft EIS. A decision based on the final EIS cannot be made until 30 days after the transmittal of the final draft to the Governor, EQC, agencies and interested parties (15 days by the proposed rule).

If a public hearing is to be held under MEPA, it will be conducted after the draft EIS has been circulated and prior to the preparation of the final EIS. All who have indicated interest to that date will be notified. While the existing rules do not specify when a hearing will be held, the proposed rules say a hearing will be when "requested (a) by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposal action, or (b) by another agency which has jurisdiction over the action, or (c) by an association having not less than 25 members who will be directly affected. Instances of doubt shall be resolved in favor of holding a public hearing."

The proposed new rules are an attempt to streamline the EIS proceedings and do not significantly affect public participation. It should be noted, however, that all provisions for CP come relatively late in the MEPA process, long after the focus of the study has been established, and that these rules only provide for comments on that which has been already written. No opportunity is ensured for the public to be involved in the open and creative portion of the decision-making process.

A sweeping blow was dealt to MEPA's significance by the "Beaver Creek II" decision of the Montana Supreme Court in 1976.[29] Reversing an earlier decision, the court rendered MEPA procedural rather than substantive. That is to say, though its provisions must be carried out, a permit cannot be denied or given on the basis of the EIS findings. One might ask then what MEPA's purpose is. Critics of the decision point to the use of false issues in arriving at the Beaver Creek II decision. Dissenting Justices Haswell and Daby agree with this criticism. Meanwhile, environmental organizations are itching for a good case with which to bring MEPA before the high court again.

Two legislatures have been confronted with bills to make MEPA substantive and bills to relegate it to a procedural status once and for all. All have been killed. For the time being, MEPA remains procedural, but this situation could change in the future.

The Major Facility Siting Act

The Major Facility Siting Act[30] was passed in 1973 and broke ground for some new elements of CP. It provides that power or energy conversion facilities may not be constructed without a certificate of environmental compatibility and public need. Revised in 1975 and again in 1979, this act has been the guiding law for monumental environmental hassles. One of its maiden applications was the Colstrip 3 & 4 battle. The hearing process took 1,114 days and resulted in 17,671 pages of transcript. The conflict is still going on some seven years from its start.[31] Problems illustrated by this conflict moved the 1979 Legislature to alter the hearing procedure to include a "paper hearing."

When an application for certificate is filed with the Department of Health and Environmental Sciences and made available for public inspection, the application is directed to contain:

> a description of the location and the proposed facility,
>
> a summary of any relevant environmental studies to date,
>
> a statement explaining the need for the facility, and
>
> a description of alternate locations, comparative merits, and rationale for chosing the primary location.

A summary of the application is published in newspapers around the primary and alternate areas of impact. Full copies are sent to municipal governing bodies in the potentially affected areas.

DNRC then undertakes a study to determine public necessity and environmental impact. The Department of Health investigates environmental impact

relative to air and water quality. On receipt of DNRC's report, a hearing date is set not more than 120 days hence. Hearing on air and water quality decisions are held in conjunction with the Board of Natural Resources and Conservation (BNRC) if so requested by the applicant.

The BNRC can appoint a hearing examiner or conduct the hearing themselves. In all situations to date, an examiner has been appointed. Within 60 days after the report has been filed, a prehearing conference is held. Its purpose is to identify the issues and to witness documentary exhibits and active parties. All active parties must exchange written testimony which they will be proposing as well as any other material they wish the board to consider at least 20 days prior to the hearing. Likewise, the BNRC will exchange all evidence it plans to rely on. New evidence will be admitted by the hearing examiner for good cause.

A hearing is held after notice is given in either Lewis & Clark County or the impacted county. Interested public can present oral or written testimony at this time in addition to the material presented by active parties and the board. All witnesses are subject to cross examination. Rules are made by the hearing examiner to exclude repetitive or irrelevant testimony, to establish rules of evidence, and to insure an orderly proceeding. The burden of proof regarding public necessity and environmental protection falls to the applicant.

Within 60 days (90 days if air and water quality hearings were held conjunctively) the hearing officer will submit to the BNRC an accompilation of proposed findings of fact, conclusions of law and a recommended decision. Within 60 days this submission the board will render a decision on the application.

While provisions are made within the siting act to assure that interested parties know what is happening, actual participation is again reserved until the research has run its course.

One interesting CP provision within the Siting Act is the citizen enforcement procedure. If a resident observes a public officer or employee not complying with a requirement or rule of the Siting Act, that resident may call it to the attention of that officer or employer. If the employer or officer does not enforce the requirement or rule, the resident may initiate action in district court.

When MEPA, the Siting Act, or any other institutionalized decision-making process is applied, the value of informal sessions between decision makers and the public cannot be underestimated. Though these sessions are not provided for in law, they do occur and can have impact on decisions based on their own merits and the receptivity of the audience.

Informal contacts are only restricted by law in the case of an adjudicatory proceeding under the Administrative Procedures Act. After a hearing has been announced, all parties must be notified of meetings between the adjudicating board and any of the parties. In these instances, all parties have the right to have a representative present.

CONCLUSION

In this part of our project we have attempted to identify the legal foundation for public participation and the various process options which are available to the public in establishing and applying siting criteria. CP has been discussed in a general sense; other practices have been explored specifically.

It should be clear that Montana has given the subject of public participation some consideration. That CP is specifically provided for in so many places would indicate that at least some decision makers believe it has value. Yet, quantity alone does not create an efficient citizen participation program. In part two we will explore the effectiveness of these process options.

NOTES

1) Richard Poston, Small Town Renaissance, (Harper & Brothers: N.Y. 1950).

2) For example: The Montana Environmental Policy Act, The Montana Strip and Underground Mine Siting Act, The Major Facility Siting Act, and Initiative 80, a severe check on siting of nuclear power plants in Montana passed in 1978 by initiative.

3) Citizen participation; "public participation" and "CP" will be used synonymously throughout this work.

4) 1972 Montana State Constitution, Article 2 section 8.

5) Transcript of Proceedings of Montana Constitutional Convention, pp. 5088, 5145, 6412, 7569, 7615 and 8042-0844.

6) "Bill of Rights Committee Proposal," February 23, 1972, p. # 20.

7) Montana Codes Annotated (MCA), Title 2, Chapter 3.

8) September 7, 1978, memorandum from GTFCP to Governor Judge, State Department Directors and Montana organizations, and citizens.

9) Gathered from conversations with various task force members.

10) 1972 Montana State Constitution, Article 2, section 9.

11) MCA Title 2, chapter 6.

12) MCA Title 2, chapter 3, part 2.

13) ibid.

14) MCA Title 2, chapter 4, part 1.

15) 1972 Montana State Constitution, Article 4, section 10, part 3.

16) ibid., Article 5, Section 11, part 2.

17) Appropriation bills are exempt from this procedure.

18) MCA Title 2, chapter 4.

19) Itemized in MCA Title 2, chapter 4, part 313. Consists mostly of libraries, courts and county governments.

20) MCA Title 2, chapter 4, part 302(4).

21) by "adopting" or "proposing" a rule, we denote repeal and amendment of rules as well.

22) by definition, "substantive rules" are those which have the force of law or which are interpretations of a statute. MCA Title 2, chapter 4, part 102(11).

23) MCA Title 2, chapter 4, part 704(2).

24) Rick Applegate, "Public Participation and Environmental Quality," Environmental Quality Council 3rd Annual Report, December 1974, p. 99.

25) "Permits" include licenses and formal approvals as well.

26) Environmental Permit Directory, Environmental Quality Council, compiled by Steven J. Pulmutter, 1978.

27) MCA Title 75, chapter 1.

28) Montana Administrative Code 16-2.2, Rule IV.

29) The Gallatin Wilderness Association and Gallatin Sportsman's Association vs the Board of Health & Environmental Sciences of the State of Montana and the Department of Health & Environmental Sciences of the State of Montana and Beaver Creek South, Inc., State Reporter, volume 33, number 13, 1979.

30) MCA Title 75, chapter 20.

31) For a chronology of the Colstrip 3 & 4 proceedings, see Appendix A of "Reforming the Montana Major Facilities Siting Act" by James Lopach & Gregory Petesch: Task A of this project, an unpublished MS. Consult the Office of the Lieutenant Governor for copies.

FINAL REPORT

PART II

CITIZEN PARTICIPATION

IN

SITING ENERGY FACILITIES

IN MONTANA

TASK E

FORD FOUNDATION PROJECT

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FOREWORD

The original concept of this study was developed by the Principal Investigator with considerable help from Dr. Lauren McKinsey of MSU's Political Science Department. His interest and courtesy are hereby acknowledged.

The overall objective of this study was to define and evaluate available public participation program options in re the use of siting criteria in Montana. A sub-objective was to make recommendations toward a more effective public participation program in the state. As should have been expected at the outset, the investigative part of the study lead to changes in these objectives. The text of this report will identify such, as needed.

The entire investigative part of this study, following the design set up initially, was conducted by Mr. William Rule, the research assistant in the project. Mr. Rule also developed the first draft of this report. If anything constructive and positive in the way of changes in current practices and thinking regarding citizen participation does indeed occur, the vast bulk of the credit will have to go to Mr. Rule.

Also to be acknowledged is the part played by the Ford Foundation, not only in the funding of the project, but also in the concept of active participation of institutions of higher education and state governments. Montana citizens owe a debt of gratitude to the Foundation.

R.A.S.

CONTENTS

Preface

This paper is the second part of a discussion on public participation in energy and industrial siting criteria in Montana. Part one is an identification of the legal foundation of citizen participation and the various process options open to the public in establishing and applying siting criteria. It contains little opinion or evaluation, concentrating on "by the book" options without delving into how well these options work and to what end.

Part two is the author's evaluation of Montana's public participation practices in regard to environmental permitting authority of state agencies. For "public participation in the application of energy and industrial siting criteria" is easily translated into those terms.

This portion is written to stand alone; hence, a few points are repeated from part one. Unlike part one, this section is steeped with opinion, much of it substantiated by an informal survey. Little of the information contained in this paper is novel, for the voluminous writings on CP have probed about every facet already. Yet because it is specific to Montana and assumes neither a defensive nor an advocative role, this discussion is somewhat unique.

We offer our many thanks to those individuals in the public and private sector who made their views known to us in an effort to supply what we hope is a panoramic view of a many-faceted question.

INTRODUCTION

The questions of how the public should be involved in the workings of government and to what end is probably as old as government itself. This paper does not pretend to have an answer to those questions. We hope, however, it will shed some light on the various issues and problems confronting Montana and give some direction to this "practice in search of a policy."

The "survey" which we will refer to periodically was administered to four groups: (1) organized special interest groups, (2) state decision makers, (3) individual members of the public who have had recent experience participating in state environmental decision making, and (4) development interests. The survey was administered in person, by telephone, and through the mail. When administered in person or over the phone, the questions were used as a guide to set up an open dialogue. Similarly, those who returned questionnaires by mail (a surprising 30% plus) did not seem to be restricted by the questions. In this manner our survey served our intent to conceptualize citizen participation (CP)[1], to evaluate the hearing process, and to identify strengths and weaknesses in our current system. While we cannot claim that our sampling has any statistical validity, we believe the results accurately identify the bugs in our system and the general feelings of the four groups. Our findings support the voluminous writings on CP and, more significantly, reflect the same information dictated by common sense.

Elitism

The most fundamental controversy regarding CP is the conflict over elitism vs. majority rule. Call it Jeffersonionism versus Federalism, democracy vs. representationism, or whatever; what is at issue is the degree to which the public should control governmental decision making.

Simple pragmatics tells us that the masses cannot be consulted for each and every decision. It is cumbersome enough just to conduct elections. For our government to function efficiently it becomes necessary to abandon much of the decision-making authority to elected representatives. These representatives have in turn released a large amount of decision-making responsibility to executive departments and their bureaucrats. These bureaucrats have law-making and policy-making authority as well as the responsibility to administer and enforce legal provisions. It is significant to note that these people are not elected. To the end that bureaucracy attracts professional personnel with the ability, knowledge, and technology to make informed decisions, this is desirable. To the end that administrators are granted concentrations of power without having to be directly accountable to the public, it is not. Except as provided by law, government administrators may or may not solicit public views. It is the irony of democracy that while we are a "government of the people," the concentration of power lies in the hands of a relative few, the ruling elite.

Elitist theory involves more than practical considerations and efficiency. More controversial is the notion held by some that the masses do not know what is best for them.

It is true that good decisions are often founded on technical knowledge far beyond the grasp of the vast majority of people. Often, decisions are based on knowledge of consequences not perceived by the masses. Further, given the nature of man to desire that decisions work to his or her individual preferences or benefit, a person who is removed from the situation will usually be in a better position to draw less biased conclusions and for a more general good.

This is not to say that government should not be sensitive to the will of the people. Yet it is difficult to determine a general will within a community given its varied special interests and the rather mutable nature of public opinions. This lack of consensus is further obscured by what "outsiders," such as the state, the site developer, the environmentalists, and the like, believe is best for the community. Just who is this "public" that the decision makers are supposed to be sensitive to? A typical coal community might pit the local chamber of commerce against the ranchers; "capitalistic, exploiting nature rapers" against the "long-haired, radical granola heads", the "newcomers" against the "old guard", father against son.... Pity the bureaucrat. "How am I supposed to determine the will of people out of this mess?" Pity the local person. "I've got my heart and soul into saving my community and the State doesn't listen to me - ever."

The results of our survey indicate a general consensus that those people who will be impacted by the proposed action should have an attentive ear. This position implies the exclusion of such special interest groups as the environmentalist[2] organizations. Not surprisingly, this notion was most pointed from development interests and similarly alligned locals. One response stated, "Special interest groups carry a torch for a cause, but don't represent the will of the people any better than the developer." Another, "I consider them (Friends of the Earth and the Sierra Club) outsiders imposing their unfounded radical opinions on the committees and interested citizens."

These special interest organizations, however, contend that they restore some balance for the underdog by meeting development interests on their own level, armed with information, professionalism, and dollars. Further, there is an underlying belief that the public can be duped by demagogues or short-sightedness into acting against their own best interests. Witness again the lack of abiding faith in the judgment of the common man.

Who are state decision makers to look to when they look for "public" participation? More fundamentally, why are we dealing with CP at all if there is little consensus of opinion and if that consensus which does exist is often uninformed? This latter question points to what we believe is the key problem and the theoretical solution of Montana's CP practices. We have these fine provisions in our constitution and CP practices in our statutes and rules; but few have thought about <u>why</u>. To what end? Only after we identify that which we are trying to accomplish by CP can we entertain such questions as "how should we go about it?" For instance, are we <u>really</u> trying to allow people a say in decisions? If so, we need a system to provide for that. (We will contend later on that the current system does not work to that end). If not, we should quit saying, "Well, after all, the people should have a say in the decisions which will affect them;" we should figure out the real reason we want CP and design a program to work to that end.

TO WHAT END?

Throughout the state agencies, CP is largly viewed as an end in itself, justified on the basis that CP programs advance traditional democratic values. This view that the act of CP is the primary, if not only, goal of participatory provisions, has resulted in an oversimplification of CP. If the act itself was the only goal, there would be little need to worry about the technique for involving the public or the type of information desired. This show of democracy with no foundation leads to dissatisfaction for all parties concerned.[3]

The notion that we need to look at why the State "wants" CP was ridiculed by many as "academic." This could be, but many learned people responded to "why" with "Well, after all, this is a democracy," "well, after all, the people should be involved in the decisions which will affect them," or the like.

These simplistic answers would imply that citizen input should influence decision making but does not address the intended results of CP. Again we ask, "to what end?"

Public Input

To the extent that the public can identify problems, ideas, and solutions which are overlooked by bureaucrats, opportunities for citizen input are invaluable. This "two-heads-are-better-than-one" theory suggests that decision makers should be open to new and better ideas; and that these ideas be sincerely evaluated on their own merits. Results of our survey indicate that most people believe this is the "degree to which decision makers should take public opinion into account." Very few, however, believed that the public's view should dictate decisions. People do realize that sensitivity to citizen demands and values is no substitute for carefully reasoned professional judgments.

Most did believe, though, that government should be sensitive to a general will of the people and especially to those who were going to be adversly impacted. Almost all members of the public or organized interest groups regardless of political stand believed the government to be negligent in this area. Given governments' current bent toward cost-benefit analysis, impacted people have reason to feel left out. When it comes down to the greatest good for the greatest number, rural communities are going to "lose" every time. One cannot deny that our rural communities are being colonized in much the same way as the Indians were. Maintaining local culture and lifestyle is quickly cast aside for the sake of energy and dollars. This controversy points to a new issue. Just how sensitive should the government be to unqualifiable values as unlocked doors and community pride? We don't have an answer, but let it suffice to say that the masses in general believe government should be far more sensitive to the values of local inhabitants than it is now.

Governmental Accountability

While citizen input used for a broad base of data from which to make decisions and citizen input to state the will of the people were the most commonly identified goals of CP, governmental accountability was not far behind. Accountability of administrators is far more likely to be reinforced if the process is open to public scrutiny. When the decision-making process is in public view, pressure is put on administrators to follow required procedures. Public confidence is enhanced, since citizens can see whether all of the issues have been fully considered.

Montana's Open Document and Open Meeting statutes provide that citizens shall have access to agency files and have the right to observe meetings. While the Open Documents Statute does open state files, it can be an awsome project to find a specific document if one is not intimately familiar with the filing system. Even harder would be finding relevant material on a topic without having specific documents in mind. This problem was recognized by the Governor's Task Force on Citizen Participation (GTFCP).[4] One proposal they were considering was to recommend that a standard indexed file system for all departments be investigated.

The open meeting notion is a subject of debate for CP advocates. At issue is the question of just how candid the workings of state government should be. The intent of the Open Meeting law is stated thus: "that actions and deliberations of all public agencies shall be conducted openly. The people of this state do not wish to abdicate their sovereignty to the agencies which serve them."[5] Armed with this notion, some CP advocates are pushing for absolute openness and candity of all agency proceedings. Most administrators balk at this idea for a variety of reasons, as follow:

1) It would bog down administrative proceedings in terms of efficiency and time to where output would be virtually nil.

2) Quite often, problem solving will involve a discussion of personalities, which some administrators are hesitant to bring into public focus.

3) The press, with its inherent tendency to sensationalize, can make "mountains out of molehills" in an effort to make a meeting newsworthy.

4) Public posturing, an inevitable consequence of an audience, would styme creative thinking. Freedom to express bad ideas is a necessary component of the critical thinking process.

Meanwhile, in their drive for a frank and open government, the advocates are promoting revisions of the Open Meetings Statute. The most complete is a list of amendments considered by the GTFCP:

a) to require a notice of meetings 72 hours in advance,

b) to include all scheduled meetings,

c) to require written statement of reasons for closed meetings,

d) to extend the 30 day filing period for suits,

e) to strengthen the sanctions of the law, and

f) to maintain a central registry of agency responses to open meeting requests and decisions.

The ideal of a totally open and candid government is a noble one. For in the people's business, there should be nothing to hide. Once again, what is at issue here is ideals vs. pragmatics. A major attitude change in decision makers would be essential to achieve this lofty goal. This alone might be feasible over a period of time. Our own opinion is that this step would even be desirable. But far more difficult would be the attitude change necessary in the public and press, the forbearance to allow administrators sincere interaction, complete with human error, personal failings, periods of incompetence, and the like. Only in this way could public posturing give way to

truly candid decision making. This ideal is, in our opinion, contrary to the "nature of the animal" and is, hence, an impossible goal. A single rabble-rouser (and there will always be one) could make enough waves to destroy the aura of candor.

A certain amount of skepticism of unwatched decision makers is not totally unjustifiable. Certainly with no right to observe the process, the public would be vulnerable to countless hazards. Yet, to assume that decision makers are not to be trusted as a rule is unwarranted. The decision-making process should be visible for the most part; and more notice of what is happening and when would be helpful to that end. Total candor?. A nice ideal, but impractical.

A person who is aware of his or her rights and knows how to get around state government will find that the government is accessable, though his or her presence may be viewed as an intrusion. But decision and policy making is not in full view of the public. Value judgments aside, right or wrong, practical or impractical, the intent of the lawmakers is not being carried out. Whether it should be is another issue entirely.

Government accountability and CP also relate to trust. One gentleman we spoke with went so far as to way that the need for citizen participation was cyclical in nature. Implied was his notion that accountability was the primary value of CP. Stated was his notion that CP is sometimes needed to pull the government back to a responsive, accountable made after which CP was a thorn in government's side, slowing down its efficiency. Another source states, "As long as individuals trust the decision makers to act in their own best interest, they have no need to participate; however, as trust erodes, the demand for participation tends to increase."[6] Another, "There is no widespread clamor for an expanded public role in fixing standards for the licensing of surgeons or plumbers even though these matters touch the lives of most people at one time or another."[7] This theory could account for the

lack of public input on such important topics as Montana's Title XX funding allocation.[8]

Certainly much of government earned this lack of trust with regard to environmental decision making. Until a group of scientists raised the consciousness of the masses in the mid-sixties, developers were given a pretty free hand with relatively little responsibility. Public outrage forced decision makers to mend the error of their ways. In the minds of many, though, this public outrage has become a lingering over-reaction.

Another interesting theory which emphasizes accountability and minimizes public input was that the value of CP practice lies in the existence of the provisions not in their use. That we have a mechanism so that those who wish to follow the decision-making process can or will keep decision makers on the straight and narrow. It would seem likely that this theory would account for one administrator's belief that "An environmental impact statement is a cover your a-- document; not an information document." This theory also implies that the value of state CP programs should not be measured by the number who use the process but rather by its net effect.

Educational Value

A third goal identified by our survey was the educational function of public participation. By seeking out information from agencies at the hand of Montana's Right to Know provisions, information is available to the public, though tempered by the aformentioned limitations. Also, by participating in informational meetings, workshops and hearings, the public can accumulate information and clear up misconceptions, especially those based on rumor.

Any community has a rumor mill, the source of voluminous bad information. Yet unless accurate information is made readily available, these rumors become accepted as truths. When this community is about to be impacted, people conjure

up the best and the worst that might happen and start becoming polarized.[9] In these instances, accurate information can serve to clear up misconceptions on which conflict is founded. A key word here is "accurate." We believe that any informational process will be biased to some degree. To hold this bias to an absolute minimum would, however, be an obviously desirable goal. To withstand claims from someone that the information is "propaganda" is probably inevitable; but all efforts should be made to assure that it is not.

The manner in which this education is conducted is worthy of some note. Most communities - just like the people in those communities - resent having public officials or other professionals tell them "what's good for them."[10] "Although education is one of the things that should happen as a result of any effective CP program, 'to educate the people' should, for most agencies, not be a major CP objective. One problem with a CP program based on a CP objective of 'educating the public', it probably could not help but give the impression that the professionals feel they know what's good for the community and, therefore are going to start educating the community. Few communities would agree to such a CP approach".[11]

While we do not agree that education should not be a major objective, this opinion does point out that this education does need to be subtle and gracious so as not to create an air of condescension. Workshops and informational meetings as held by some departments can be effective to this end.

If one believes that citizen input into the decision-making process is desirable, it would stand to reason that this input should be based on sound knowledge. In so far as public participation contributes to this knowledge, CP is beneficial to this end as well.

To this point we have been discussing education regarding the specifics of a site. Let us look now at education relative to the legal system. Quite

often, hard feelings are generated by citizens not understanding the impact their opinion can have. Witness mining claims: If a developer can show that he is complying with the letter of the law (in some cases this "letter" is little more than an application), the agency, in this instance the Department of State Lands, is bound by law to issue a permit. Resistance by the people or even by the ruling elite cannot change that. Only legislation can. Certainly an agency bias can bend the laws or the data to some degree, but litigation against the agency from either polarized faction is a constant sword over their head.

Educating the public in the way the process works as mandated by law reduces legally irrelevant participation and minimizes frustration of those who find out their testimony is irrelevant. Note that "legally irrelevant" does not mean that the input should have no substance in rational decision making, only that it does not affect the decision by law. As one administrator stated, "What is at issue is public health, welfare, and safety; not majority vote."

In knowing how the system works, the public can make its participation more effective, but it drastically limits their input. This too is a frustration of significant proportions.

Conflict Management

Adversary participation has been a mainstay of CP practices in Montana and elsewhere in recent years. Conflict is unnecessary when based on bad information. But what if it is based on a polarized set of values or conflicting personal gain? One cannot deny that some balance is achieved by these clashing extremes. Neither can one deny the enormous waste of time, money, and human resources. Some conflict theory identifies three types of conflict: sinple conflict - that which implies mutually exclusive outcomes (i.e., coal-fired

generators and absolutely clean air); psuedo conflict - that which is based on misconception or lack of information (Oh, I see now; I thought you said "green air."); and ego conflict - that which is based on emotion and personal affronts ("Aw, you locals are just a bunch of conservative red necks").

As mentioned above, many misconceptions can be cleared up by supplying the local populus with accurate information. By the same token, government and development interests should be open to having some of their perceptions altered as well. We believe psuedo-conflict can best be alleviated or avoided by frank, open, timely exchanges of information on a one to one level.

Personal interaction, however, can easily get to the name-calling stage if allowed to run on without safeguards. Such ego-conflict is unnecessary and futile. Still, sometimes it becomes the primary focus of a public meeting, after which the meeting degenerates totally. This counterproductive conflict can be avoided by skillful direction of meetings and should be "nipped in the bud" whenever it "crops" up.

Simple conflict is the real conflict. While involving the public is not going to solve all controversies, through open interaction the true issues can be identified and addressed. Once the points of contention have been delineated, logical support can be evaluated and decisions can be made. Simple conflict is a valuable instrument in good decision making; its resolution a final goal.

To frustrate conflict resolution becomes adversary participation. While the ethics of adversary participation can be questioned, its effectiveness cannot. Most adversary activists, in fact, claim that this rather unpleasant process is the only effective means of achieving balance allowed by the system with the possible exception of referendums and initiatives. To eliminate adversary participation would definitely move the balance of advantage in favor of development interests.

When conceptualizing a public participation policy, this dichotomy should be treated with kid gloves. A stroke of the pen eliminating adversary participation would necessitate that effective balance be restored by some other means.

One gentleman with whom we spoke discussed citizen participation as a marketing tool. His contention was that, by involving the public early enough, agencies can identify the potential conflict and "market" their decision so as to not stir up any more conflict than is absolutely necessary. Further, he believed that this knowledge of where the public stands can be used to make early compromises, thus eliminating potential hassles. This theory does not emphasize input for the sake of a broader decision making base, but rather as a means for agencies to follow the path of least resistance.

Early involvement of the public eliminates conflict in more subtle ways too. "Interests who participate - or have the opportunity to participate - in an agency's planning process, generally do not - and cannot - take extremist or irresponsible positions as readily as can interests who have been completely outside the planning process."[12]

Conflict in the decision-making process is inevitable. This is not necessarily bad, for conflict will identify a broader spectrum of issues, the resolution of which become the decisions, decisions which will be better founded for having been explored more deeply.

Other Values Noted

Several other goals of CP were mentioned in our survey which bear some mention. Most of them are closely related to the aforementioned categories. Closely related to each other are "responsiveness," "citizen identity," and the intention of "keeping the government from getting too far away." All of these imply that government should be sensitive to the people, the latter two suggesting that the value lies in the public's peace of mind. A number

of people stated that the goal of CP was to discharge legal obligations, several of these people stating that this was the only goal.

Closely relating to conflict management was the notion expressed by some that the purpose of public participation is to define middle ground. Several remarked that the intent of CP is to balance competing interests, with one saying, "The purpose of CP is to counterbalance special dollar interests. Balance cannot be achieved with just the regulator talking to the regulated." Another suggested that its intent is to "protect citizens' rights."

These were the goals of CP as expressed in our survey in order of descending frequency. There could easily be others. Those which were mentioned could have been expressed in different terms.[13] We do not suggest that all the goals mentioned in this part are necessarily desirable although they could well be. We do contend, however, that different methods of involving the public achieve different ends and that if Montana sincerely wishes to have a CP program, we first need to decide what it is we wish to accomplish. The rah-rah, apple-pie approach to CP, as exercised by both CP advocates and state administrators, has little conceptual base. Hence, we have in Montana a CP program allowing for a lot of citizen involvement with little substance - a practice without a policy.

A LOOK AT THE PROBLEMS

We believe Montana's most fundamental problem, the one just mentioned, is that the people who designed our CP practices and those people implementing them have generally not explored what it is they wish to accomplish by involving the public. Even most citizen advocates approach the problem from a "more-is-better" tack. This "quantity-with-little-regard-for-quality" approach is of little substance either. The institutionalized system as it now works only moderately

achieves any of the goals as delineated in the previous section. Fortunately, some agencies go beyond the minimum requirements and do achieve some effective results.

Some bureaucrats admit that they only wish to involve the public to the extent that it is mandated by law. Others have found value in involving citizens throughout the entire decision-making process, and go to great lengths to involve people to an extent far more than is institutionalized. The option to involve the public in whatever manner to whatever degree is available to agencies as long as they at least fulfill the law. But administrations change. And so do agency CP policies. Hence, we believe an effective program should ideally be instituted by law to whatever end our politicians decide is desirable. We emphasize that the type of program, not the quantity of public involvement will achieve these desirable ends.

Public Hearings

It is unfortunate, but throughout most of Montana "public participation" is synonomous with "hearing." Though not universal, this generality applies to bureaucrats, developers, special interest organizations, and the public at large. Almost everyone queried about public participation initially answered in terms of their experiences with hearings. This is understandable, for hearings are used extensively in Montana as a medium for CP. They are the most visable means of participation by virtue of involving the most people and getting the most press coverage. This generality also reflects the fact that most statutes relative to energy and industrial siting provide for public involvement only by mandating a hearing and a comment period.

Hearings take many forms. Some are low keyed informational gatherings; others are verbal battlegrounds. Some are poorly attended; others are packed to the rafters. Despite this variety of complexion, some generalities can be

drawn, the most notable one being that few people like hearings or find them effective.

Hearings on the most significant decisions are the worst. All too often these meetings become tied up by polarized factions, each staging a piece of drama for the sake of the media or the agency.

The results of our survey delineate a number of vehement criticisms of hearings from all parties concerned. Following is a list of the most commonly stated objections. Those which are marked (*) were notably recurrent.

* Notice of the hearings is not adequate. Very few people read the legal notices in the paper.

* Hearings are located too far away to get to, especially for the people in Eastern Montana.

* The special interests with their polished professionals totally overshadow the locals who are more easily intimidated.

* The whole proceeding is just an act anyway. Nothing comes out that could not just as easily be said in a letter.

* Too many people with no stake in the outcome are involved.

* Agencies do not listen to the input; they only hold hearings to give the appearance of listening.

Time is wasted by uninformed opinion being presented.

Hearings are too expensive to attend, given time off work and mileage to and from.

* Decisions have already been made by time hearing is held.[14]

* Hearings do not show the will of the people. Meetings are packed by extremists giving a distorted view; the contented people do not show at all.

Early hearings had spontaneity and espoused new philosophies. Now they have become institutionalized, and everybody who attends knows what will be said.

They pit neighbor against neighbor publicly.

People are restricted to talk about EIS, someone else's writing which is too long and technical to be understood by the layman.

Those conducting hearing do not make their purpose clear.

Purpose of hearings is to promote programs and deflect criticism.

Agencies seek only favorable input.

The same issues are produced over and over.

People get too long winded and boring.

* Agencies inject their biases into the hearings.

* Officials are not accountable for the input.

* The public does not understand the issues.

When hearings cover open-ended questions, the response is so fragmented that the agency can pick whatever it wants to justify any action.

* Hearings produce no new data.

They generate open conflict.

* They seldom alter course of action.

* Special interest organizations speak for people whom they do not represent.

The public is not qualified to aid in technical decisions.

The public reacts on emotion and personal opinion rather than on sound knowledge.

Expense of hearings is out of hand.

* Agencies hold numerous hearings where few if any people show up.

The public does not understand that hearings are procedural, not substantive.

We recognize that these opinions are primarily generated from experience with the larger, more visable hearings. However, these hearings are on the more important siting decisions where public opinion is ostensibly more valuable.

A few good things can be said of hearings. They are time and cost efficient in terms of involving a group of public with a minimum of agency staffing. In many instances they allow agencies to peg public sentiment, clear up misconceptions and educate the public to some degree. Hearings provide a forum for the public to blow off steam thereby serving a placating function. Some agencies

claim that they do make a sincere effort to consider all input. Some take particular notice when a general tone is evidenced which was not anticipated.

We believe that hearings are of some benefit to the state agencies, efficiently discharging their responsibilities and allowing them to pigeon-hole the public. But we do not believe hearings work to the public's benefit as a rule.

The expressed intent of our CP laws indicates two major points: (1) that the public has the right to know what is going on and (2) that they should be able to have input into the decision-making system. Hearings do not provide for substantive input.[15] They are almost always held after a preliminary decision has already been made. The two most significant laws relating to siting, MEPA and the Facility Siting Act, do not provide for input until after a draft EIS has been written; and even then, the comments are restricted to addressing the EIS which the public had no hand in outlining or writing.

A public comment period on a decision or specific piece of writing (in the case of an EIS) long after the focus of the decision-making process has been determined and after most of the research is done is not an adequate provision for input. It is just too restricted and too late.

The people who want to be involved are frustrated. They want to be able to tell decision makers why they favor a certain decision. The majority believe hearings are a charade allowing for "input" after the decision-making process has pretty well run its course. Many believe that a decision has already been made by this point.[16] There is a cynical, almost hostile skepticism about decision makers' caring what the public thinks. We believe this ill will to be a significant problem worthy of state attention. It is interesting to note that, notwithstanding some individual exceptions, no group which we surveyed cared for hearings.

Next to the public's belief that agencies do not listen to them and the developers' belief that agencies effect their biases on hearings, the most often heard problem is well expressed in the following excerps from an editorial.

> Faced with this awesome audience both proponents and opponents unleashed their big guns on the EPA. That startling spectacle was quite enough to overpower any audience. So much, in fact, that the succeeding two acts were somewhat of a let down.
>
> You didn't need a drama critic to tell what was going to happen in the episodes slated to unload in Colstrip and Lame Deer on following nights.
>
> Of course there was no need at all for reporters to be present at any of the hearings. A member in good standing of the Northern Plains Resource Council would have to be a fool to stand up amid the pipefitters and plant operators in Colstrip and tell them southeastern Montana isn't big enough for two more power plants.
>
> And if you wanted to know how General Custer felt, all you had to do was to stand up in Lame Deer and tell the audience there that 'steam powerplants are safer than sex.'
>
> In fact, as far as wasted man-hours are concerned, there wasn't one shred of evidence brought out at the EPA hearings that couldn't have been entered just as effectively in a letter to the bureaucracy.
>
> So now that both sides have the skill of hearing going down to an exact science and have embellished that with ample skill in clouding issues, we know precisely what to look for in future hearings. And one day we'll have enough sense to stay away from these travesties completely.
>
> Now don't get me wrong, I don't mean to say that there's no place in American Democracy for the public hearing. Indeed the public must have as much input as possible about the decisions which their leaders are making.
>
> But public hearings today are put on for one purpose, and one purpose only. If we out here in the hinterlands think a segment of the bureaucracy is stalling on a particular subject, they'll call a hearing just to let us know we have their attention, and after the hearing they'll stall some more.[17]

If we consider conflict management to be a goal of CP, we must conclude that hearings are dysfunctional to this end too. Many people who are reasonable

on a one-to-one discussion will take an uncompromising stand in front of an audience, thereby tending to further polarize that speaker. Besides this, a hearing, by its own nature and the nature of those who attend, provides an ideal setting for confrontation.

After a hearing has run its course, an aggrieved person has only adversarial options available to him, judicial review under the Administrative procedures act and out-and-out litigation.

Notice and Convenience

Public notice of hearings and meetings is a point of contention among some people. Most of the statutes relating to permitting authority only require that notice of a hearing be published in a newspaper of local circulation once a week for several consecutive weeks prior to the occasion. Unless an agency pays for advertising space, this notice gets tucked back in the legal notice section, to be read only by the very few who read that section.

Our research did not probe into how often this minimum compliance with the law was supplemented, but many responses from the public dunned the agencies for not providing enough notice and not supplying enough information. Some people suggested that notices should include the format of the hearing and a clear statement of what was to be accomplished.

Agency personnel generally believed their work was adequate. Said one administrator, "Some people choose a lifestyle of living back in the sticks and isolating themselves from media. What are we supposed to do, start sky-writing?" Another suggested that there will always be someone who does not get the word.

We frankly don't know how much of a problem exists but it is clear that a significant portion of the public believes that one does.

An additional problem for some is getting to the hearings. Some people claimed that hearings should be held at night so as not to interfere with work. Others suggested that hearings should be held during the day because people were too tired after a long day's work.

All this aside, many individuals claimed that hearings were too far away. Wrote one lady, "...and I would hope that hearings would be held in Eastern Montana. (Billings is not Eastern Montana)." This same woman later contacted us to complain that the people in her community could not get the Department of Health and Environmental Sciences to come to that part of the state to discuss ambient air quality standards.

The contention that hearings are too often held too far away was echoed by many--including state administrators who sometimes do travel to the outlying areas. Their complaint is founded on the expense of the hearing relative to its value. Our large state and sparse population do pose a problem in collecting people together. It would seem then that more funds or a different method of involving the public is needed.

The People - Apathetic and Unknowledgeable

As the story goes, two men were talking when one asked the other, "What is the difference between ignorance and apathy?" Replied the other, "I don't know, and I don't care."

One cannot say that the public is either universally apathetic or universally unknowledgeable. But strike the work "universally," and you have the most often used arguments for minimizing public involvement.

Apathy can be discussed in terms of the public not caring or in terms of the public not becoming involved. All too often, the observation that the public is not involved is automatically taken to mean that the public does not care about what decisions are being made. Other conclusions can be drawn as

well. A sizable portion of the public, as well as some sociologists, contends that the public does care, but that they are frustrated from previous encounters with the State bureaucracy and have given up. One gentleman stated, "Montana's CP policy is structured to result in a lack of CP." A sociologist described this as the "disenchantment process" and contended that Montana is starting from a negative point if it wants to develop an effective citizen participation program.

Many people conclude from the relative lack of involvement that the public is basically content with the decisions which are being made and feel no need to become involved. This notion would go hand in hand with the "trust theory" as discussed earlier. Another very popular impression is that the public only becomes involved "when their own personal ox is gored."

We believe that all of these views are accurate to some degree, but to what degree we are quite unsure. Elitist theory suggests that apathy is a necessary component of our system of government; that, if everyone were involved, each representing his own faction, we would be faced with a "mobocracy." While we are in agreement with this, we also feel individuals should have the right to substantive input when they are subject to injurious decisions. It is of little consequence that people are not involved when they are content or when they trust the decision makers. An effective system must be in place for the times when people lose that trust in government or are liable to be harmed.

Will Rogers once said, "We are all ignorant--only on different subjects." Still, it seems to be the tendency of man to believe that his own knowledge and values are the best criteria for making decisions. Hence, you might hear bureaucrats saying, "These are technical decisions; what do you ranchers know about ambient air quality standards?" and a hypothetical rancher saying "What

do I need to know? I know I want clean air. Besides what do you guys know about living in this part of the state?" Bureaucrats' reply: "What do I need to know? My job is to administer a law."

Few would deny that decisions should be made by those who have the specialized knowledge, the technical ability and a broad perspective from which to make sound judgments. While a few of the public can add to the specialized knowledge and technical ability, the vast majority cannot. Hence, input regarding technical decisions is consciously cast aside. Further, bureaucrats are charged with administering the laws as they are written, and their conclusions must conform to some rather constricting codes. Much of the public does not comprehend this truism.

Still the public does have relevant input for decision makers, who, better than anyone, know their own concerns, the lay of the land, the soci-cultural structure, and their own values. Current cost-benefit analysis effectively negates this input. Largely, this is the fault of the law;[18] although some decision makers are partially to blame for an active or passive insensitivity to values of the public. As pointed out by Gore, "Formal organization accounts for only a part of surface behavior. Informal organization, with its sensitivity to motivation, communication, sanction, habitual behavior, and threat symbol, help explain the remainder."[19]

On the other hand, these decision makers are conditioned by bad experiences with the public, for they must deal with people who are emotional and/or irrational and who make no effort to understand the issues or criteria for decisions. As the saying goes, "You can lead a 'horticulture,' but you can't make her think." After enough bad experiences with personal affronts and lack of reason, these human beings get frustrated too. One can understand how their sincere efforts to involve the public might burn out. Once again, we have evidence that our system is not working.

Provisions for the public to inject additional or conflicting data should be insured, but substantive input into the technical aspect should not be expected. The true point of contention lies in how much this technical data should be weighed against the values of the people, especially unquantifiable values.

We recognize that these values can be founded on a narrow outlook or faulty knowledge and that, even if they are not, consensus, if it exists, is hard to identify. That these problems exist does not lessen the state's responsibility to try to solve them. We will later contend that some creative thinking can jar us from the ineffectual rut we now find ourselves in.

Resistance to Change

"Our government does not react to philosophies," said one bureaucrat. "It reacts to crisis. If you want a government which can change easily, look to a dictatorship." Another bureaucrat explained that the upper eschelon, the would-be generators of change, are "too busy running around putting out little fires to have time for instigating major changes which would upset the whole applecart."

Another theory supporting agency resistance to change implies protection of the status quo. Indeed, given the defensiveness which we encountered, we cannot be optimistic about the prospects for change; especially a revision as large as would be required to build an effective CP program. That change is needed is generally admitted. Support for that change is harder to come by. In truth, there is little incentive for agencies to initiate change.

A lack of commitment to CP by agencies is evidenced in their attitude that CP is an obligation rather than an opportunity. With a few notable exceptions,[20] state departments do little to go beyond the minimum as required by law. That this is done little indicates the need to legislate CP or change the attitudes of administrators.

The Montana Legislature is not particularly responsive to the opinions of its electorate on environmental issues.[21] Past years have seen domination of the legislature by development interests, most notably by "The Company" (Anaconda Copper Company and Montana Power).[22] Later years have seen a reduction in this imbalance, but industry's influence in our lawmaking is still weighty. Though many developers have come to see the conflict management value of involving the public in environmental decisions, it is unlikely that they would stand for a major revision of the many CP provisions (mostly hearings and comment periods) for fear of creating unforeseen disadvantages to their interests. Practically speaking, these are realistic fears; their opposition is conditioned to grab whatever lever is available to contest a development.[23] It is doubtful that the legislature could muster the interest or the votes to revise current CP provisions.

At the risk of sounding overly pessimistic, we must conclude that though the need for change is obvious, the chances for revising the legal foundation of CP are slight.

FUNDING

Public participation costs money. If the state establishes field offices, holds more workshops, hires ombudsmen, publishes handbooks, or whatever, money is spent. When the public participates on their own initiative, it comes out of their own pockets in gas, time, phone calls, postage, and so forth. When developers participate, the dollars come out of everyone's pocket. They foot some of the bills themselves but the public pays through increase in cost of goods and services, and the state loses revenue because a lot of the developers' costs can be deducted from taxes as "advertising expense."

Even with this inequity, we do not believe that government should be funding the public's acting on their own initiative as was suggested by some. We do, however, recognize the need for some new programs and materials which should be provided at the expense of the State.

Very little money can be squeezed from the various agencies. There are few dollars which are not already allotted, and public participation would be a low priority anyway.[24] Funding in the amount which would be necessary to institute an effective CP program could come only from the State Legislature. That there has been no push to acquire this money even by the executive departments who claim to support CP[25] is further evidence of a lack of real commitment to CP.

We hold the belief that an effective CP program would actually save the state money in the long run. For providing timely means for the public to be involved, much of the conflict which now bogs down the workings of government and forces the state to expend countless time and energy, will be avoided.

Other Problems

CP and government planning are divorced from each other and represent two types of organizational behavior. Agencies, with their eye on "public health, safety and welfare" and "public need and convenience" rely on technical data describing feasibility, cost effectiveness and the like. The public, however, views siting from a behavioral perspective, placing emphasis on values such as a healthier economy, maintenance of the status quo, and clean air. Agency planning, rooted in the physical technology, does not put much store in behavioral input.[26]

Two problems are the result of the dichotomy between physical and behavioral technologies. Techniques for gathering information from the public are not viewed as behavioral procedures; and incorporating the behaviorally oriented

data into the physically oriented criteria for decision making is difficult at best. As a result, CP has little substantive inpact on agency output.

Another complaint with Montana's CP practices is only considered to be a problem by some. That complaint is that a minority of people can use the state's CP provisions to frustrate agency action, hence bogging down the system and delaying developers. This adversary participation, labeled obstructionism by some, works to the advantage of those resisting development, and won't be given up without a fight. Almost all developers who answered our questionnaire and some of the administrators urged that time restrictions be put on CP to prevent this activity.

ALTERNATIVES

Many process options are available in addition to public hearings. Following is a discussion of some. Our point here is not to supply an extensive list, but rather to illustrate that a bit of creative restructuring of existing CP programs could alleviate a number of Montana's CP problems.

Citizen Advisory Committees - As we discuss them here, we do not intend "advisory committee" to mean just those as provided by statute. Rather, we mean a group of citizens, representative of the various interests, whose purpose is to make recommendations to a decision making body. By involving various special interests, issues can be clearly delineated, and each of the spokesmen can serve as a representative to his interest group, supplying them with valuable perspectives and insight. Such committees also can provide decision makers with a short-cut method for getting community reactions to alternatives. Montana Power Company has had some recent success in using advisory groups to define priorities and preferences.

Scoping - In the early stages of an environmental assessment, someone has to decide what specifically will be studied. By involving the public in that process, people are assured that their concerns will be addressed. Better than anyone, they can identify their own concerns. Citizens could be allowed early and creative input, and Montana would be responsive to their concerns by objectively studying them.

Mediation - When conflict becomes a problem rather than a solution (as in the cases of obstructionism), or in cases where the agency is placed in the position of referee between two competing interests, mediation can be of value. Long used as one solution to labor disputes, mediation has been valuable in some states resolving environmental issues. By identifying the simple conflicts and disposing of ego and psuedo conflict, issues can be delineated and compromises can be made.

Charrettes - These intensive brainstroming sessions derive their value from creating solutions rather than dwelling on problems. Charrettes not only serve the function of compiling a comprehensive list of potential solutions, but also succeed in getting people to work together. People feel as if they are part of the system and can even develop a camaraderie with those of opposing views.

Project-specific newsletters - When the public is not kept informed by facts, the rumor mill fills the gaps. We emphasize that the newsletters should be composed entirely of facts; any slanted views immediately destroy their credibility. When written in lay terms, a newsletter can keep the people informed of the procedure, its problems, any meetings, comment periods and the like.

Workshops - Many types of workshops can be used to accommodate variables in issues to be resolved, number of people involved, and the demeanor of the people. When conducted properly, workshops provide an educational function and identify the key issues as seen by the public and a number of potential solutions. If used early in the decision-making process, they can allow for substantive input from the public in prioritizing issues and offering solutions. It is important, however, that workshop coordinators have a good background in group dynamics and discussion leadership.

Ombudsmen - These liaison people are independent investigative officers within government hired to aid the public in cutting through red tape and seeing that complaints are heard and answered. Used effectively in Scandanavian countries, ombudsmen would only be effective if administrators are truly committed to the concept and grant sufficient support and independence. With with commitment, ombudsmen can serve a lightning rod function to agencies as well as solving problems before they get out of hand. The GTFCP recommended the appointment of an "advocate" to fulfill this function. "Lack of funding" was given as the reason why this recommendation was not implemented.

Surveys - A technically demanding method of gathering information, surveys can discover opinions of the public which are representative. Surveys which are on important issues or which will be weighed heavily should be conducted by someone with technical expertise in designing and administering surveys.

These and many other techniques can be implemented to achieve the various goals of CP. Once the goals are identified, a little research and creative thinking can generate an effective CP program for Montana.

CONCLUSION

The practice of citizen participation should not be considered as an end in itself. Yet throughout Montana, CP is viewed in a "mother and apple pie" vein, its purpose to further the principles of democracy. This attitude that the value of involving the public is obvious and therefore spending effort in defining the intent of CP is a pointless exercise in academics and resulted in just that: few people have bothered to explore why we want public participation.

Where does this attitude leave us? "State agencies fulfill their legal obligations perfunctorily. CP advocates battle for more ways to get the public involved with little thought of quality over quantity. Adversarial battles slow the workings of government to a crawl. The public is frustrated because their government is too far away and is not sensitive to their values. Bureaucrats are tired of individuals feeling that their preferences should dictate siting decisions. And still developments are never stopped - only stalled."[27] The point of these overstatements is to illustrate that a problem exists in the minds of Montanans. Practically no one believes the current system works effectively. We feel the root of this problem is that few people have conceptualized what end CP is working toward.

Involving the public at timely stages in the decision-making process can be of benefit to all concerned if done correctly. CP can allow the people meaningful and creative input into decision making; it can bring government closer to the people; it can minimize conflict; it can keep government accountable and honest; and it can provide a balance among developers, the environment, and the impacted people. If these goals are obvious, it should be even more obvious that only a few are even moderately achieved. A fair degree of potential corruption is cut off by our open meetings and open documents laws; and balance

between competing interests is insured by the allowance of adversary participation, though it is considered by many to be an undesirable practice.

We do not contend that all of the above-mentioned goals are desirable. Maybe input based on value judgments of local folks should not be a substantive factor contributing to decision making. If that is the case, let's say so and be done with it; if not, let's make a sincere effort to gather and use this input.

Montana's current CP efforts are almost totally dependent on hearings and public comment periods which are held after a preliminary decision has been reached. These proceedings do little to achieve any of the goals outlined above. In many cases they are dysfunctional. About the best that can be said for hearings is that they identify the issues as seen by both "armed camps." They may also serve an educational function; but they do not provide for open, meaningful input from the public, and do little toward conflict resolution, providing a balance between competing interests, keeping the government responsible and accountable, or making people feel they are a part of the system.

Many avenues do exist to achieve these ends. Mediation is working in some states. The Colorado Review Process, though in its formative stage, is proving effective by involving the public in all stages of decision making. Forums and workshops can be used far more effectively. To involve people in a scoping process would give creative input at an early point. Charrettes at an early stage would identify issues and conflict guidelines as well as be informative. Ombudsmen and advocates could effectively represent the public. Well constructed surveys can collect valuable and representative data. Project-specific newsletters can keep the public informed. These and many other options are available. To repeat, with some creative thinking and with specific goals in mind, Montana could develop an effective CP program.

One asset Montana has relating to CP is an accessible government, both by law and by the attitude of state administrators. It seems that the people are not aware of this. Nor do they know how to find the proper channels to give or get information. We believe Montana could profit by a manual on CP which would identify legal rights and responsibilities of the people, how they can most effectively give and receive information, and the various process options open to them.

All of these ideas cost money. Whether or not funding is appropriated will be indicative of just how concerned the state is about involving the public

The citizen component is only one factor in carefully reasoned decisions--and not necessarily the controlling one. But insofar as CP serves a number of valuable functions, Montana should not pass up the opportunity (as opposed to obligation) to involve its public to these ends. Let us first conceptualize a policy, and then put an effective public participation program into practice.

NOTES

1) "Citizen participation," "public participation," and "CP" are used synonymously throughout this paper.

2) "Environmentalist" is a bad term at best. It conjures up inaccurate connotations and stereotypes. Yet for the purposes of this work "environmentalist" appropriately fills the need of describing those whose primary point of involvement is to protect the physical surroundings. Likewise, "bureaucrat" and "developer" are used with no derogation intended.

3) These thoughts were original to us also, but best put by a certain "paper in draft stage: not for quotation." Some of its thought line was used anyway.

4) The GTFCP was appointed in January 1978 to study CP requirements, practices and possibilities; to formulate a realistic comprehensive set of recommendations for Montana State Government; and to assist the Governor, State agencies and citizens in implementing those recommendations which were approved and accepted. Plagued by lack of funding, staff, citizen support and acceptance of proposals by agency directors, little has become of their work.

5) MCA, Title 2, CL 3, Pt 2.

6) W. Gamson, Power and Discontent (1968), quoted in Utton, et. al., Natural Resources for a Democratic Society, "Some Observations on Alternative Mechanisms for Public Involvement" by Thomas A. Heberlein, p. 198.

7) Reidel, "Citizen Participation: Myths and Realities", 32 Public Administrative Review, pp. 211-219 (1972) quoted in Utton et. al. by Heberlein. op. cit., p. 198.

8) Title XX funds are federal grants to states for social projects. The federal government directs that the public is to be involved in decisions regarding how that money is used. Several administrators cited the lack of public attendance at Title XX hearings as evidence that the public is apathetic and/or does not direct their attention to some more significant decisions.

9) Based on a June 1979 conversation with Dr. Raymond Gold, Social Research Department, University of Montana.

10) Institute for Participatory Planning (IPP), Citizen Participation Handbook for Public Officials and Other Professionals Serving the Public, University Station, Laramie, WY., Second Edition, 1977.

11) ibid.

12) ibid.

13) The IPP handbook, for instance, discusses "agency legitimization," but implies that the goals are accountability and conflict reduction.

14) The public's strong belief that this is true is evidenced further by work such as that done for DNRC on the Colstrip EIS and contained in Table 95 of that study.

15) IPP Handbook, op. cit.; Heberlein in Utton et. al., op. cit., among others.

16) This notion was candidly conceded by a few administrators.

17) "The Fine Art of Hearing Going", Editorial by Steve Jessen in The Forsyth Independant, June 7, 1979.

18) For instance, MEPA has provisions for studying many non-physical effects of a site such as aesthetics, economics, and social structure; but because MEPA has been relegated to a procedural status, the conclusions cannot affect the permitting decision.

19) William F. Gore, Administrative Decision-Making: A Heuristic Model, John Wiley and Sons, 1964.

20) Montana's Water Quality Bureau and the DNRC seem to be two agencies which go to lengths to provide for public input. We don't doubt there are others. The State Department of Fish, Wildlife and Parks promotes CP as it generally works to their political advantages. Those agencies who do go beyond the minimum, do so at the will of the current administration, an administration which is subject to change.

21) Jerry W. Calvert, MSU Department of Political Science, paper: "The Social and Ideological Bases of Support for Environmental Legislation," to be published in a condensed version in Western Political Quarterly, Fall, 1979.

22) Joseph Henry Howard, Montana: High Wide and Handsome, Yale University Press, 1943, and Richard Poston, Small Town Renaissance, Greenwood Press, 1950.

23) This notion is well illustrated in the following account by a representative of a developer: "We tried to be Boy Scouts once, be open and disclose everything. They lthe special interest organizationsl chewed us up. The more we disclose, the more objections can be raised; so I advise my clients to show only what is necessary. This isn't constructive; but it's our best defense."

24) One gentleman with whom we spoke believed a value change rather than more dollars was needed. "The State can afford to hire all kinds of people to sell decisions to the public. It seems like one or two of those positions could be filled by someone paid to be sensitive to the public."

25) Most notably, the Governor's Office and those agencies who rejected a number of the GTFCP recommendations on the grounds of their cost.

26) These opinions are informed by the observations of Bruce B. Clary, Department of Political Science, North Carolina State University, in his paper "Building Public Participation into Environmental Assessment: a Survey Based Matrix Approach" 1978.

27) There - have we left anyone unoffended?

28) Much of the following is informed by the IPP Handbook, op. cit.